IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.MC.No. 3080 of 2007()

CC.502/2007 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA

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PETITIONER/ACCUSED IN C.C.NO.502/07:

MOHANAN, S/O.SUKUMARAN, MALLIKABHAVANIL
KARIKKAL MURI, PAVITHRESWARAM VILLAGE.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI
SRI.K.V.ANIL KUMAR

RESPONDENT/COMPLAINANT IN C.C.NO.502/07:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3080 of 2007

Dated this the 5th day of October 2007

O R D E R

The petitioner was one of the accused in a crime registered for offences punishable inter alia under Sections 447 and 427 read with 34 I.P.C. Investigation is complete. Final report has already been filed. Cognizance has been taken. The petitioner who was allegedly not available in India at the time when cognizance was taken could not and did not appear before the learned Magistrate. The case against the petitioner has been split up. The co-accused were tried, found not guilty and acquitted also. Coercive processes have been initiated against the petitioner. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him. He has, in these circumstances, come before this court for issue of appropriate directions under Section 438 Cr.P.C and/or 482 Cr.P.C.

2. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He is willing to surrender before the learned Magistrate and seek regular bail. He apprehends that his application for regular bail may not be

considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further submits that he may be permitted to appear through counsel.

3. The learned Public Prosecutor only submits that the petitioner may be directed to surrender before the learned Magistrate and seek regular bail. I have considered all the relevant inputs. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with

law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

6. After the petitioner appears, the petitioner can certainly apply for exemption from personal appearance. The learned Magistrate must consider such application also on merits, in accordance with law and expeditiously. No further specific directions need be issued.

7. This Criminal Miscellaneous Case is dismissed with the above observations.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007